



Waste or Product Determination Guidance

Have you ever wondered what is the difference between a waste and a product? A product can turn into a waste if a facility does not properly protect the product or it becomes out of date. The Missouri Department of Natural Resources has developed this fact sheet to help generators determine if a product is really a waste.

Generators must use products for its intended purpose. If a generator is no longer using the product, it must be properly disposed of and not abandoned or stored. A business still using a product and is being stored on the property must comply with Missouri's hazardous waste regulations. This fact sheet is not intended to address materials that are hazardous waste such as waste solvents that are sent to fuel blenders or burners.

Criteria for determining if a material is a product or waste

When determining if a material in storage is a product or waste, the generator should consider the following criteria.

- The generator must be able to document the ability to use the material in a specified process. Changes in formulations, processes and equipment may make a material obsolete. Unusable material must be properly disposed of and can not be stored.
- If a facility believes that another company can use a material, that facility must document they are actively attempting to market the material. If they locate a company that is interested in using the material as a product, that company must demonstrate they can legitimately use the material in one of its processes.
- To be considered a product, materials are protected from the environment and extreme storage conditions. The environment and human health must be protected if the material is hazardous.
- To be considered a product, the facility must be able to identify the material being stored and its use. If the facility representative is unaware of what the material is or, its intended use, it should be considered a waste. Ideally, if the material is a product, the facility should track it in the inventory or accounting system.
- To be considered a product, the material must be stored as though it has value. It must be stored in accordance with guidance and warnings in the Material Safety Data Sheet, such as stored in a dry place and stored at a proper temperature. The facility should manage stored materials in accordance with its quality control policies and procedures.
- Containers used to store product must be in good condition and compatible with the material being stored. If containers are rusted, leaking, open, etc., then the material can be considered a waste because of exposure or contamination.

- The material itself must be in a condition that it can be used in a manner originally intended for the material. If the material can be legitimately used as a substitute for another product, without any processing or treatment, the material is not a solid waste and therefore is not a hazardous waste. If your facility can reasonably use the material in the future, then the material is a product.
- To be considered a product, the recommended shelf life of the material must not have been exceeded. Excessive storage times beyond the expiration dates or recommended shelf life of the product is an indicator that the material is a waste and not a usable product.
- Products and waste should be stored and managed separately. If a drum is labeled “Quarantined”, “DO NOT USE”, “Hazardous Waste”, “Waste _____”, etc., the material is considered a waste and must be managed as such.

Is the waste hazardous?

Once you have determined if a material is a waste, you must determine if that waste is hazardous or non-hazardous. The generator should first determine if the waste is excluded from regulation under 40 CFR 261.2. If the waste is not excluded, then the generator is required to determine if the waste is listed as a hazardous waste in subpart D of 40 CFR 261. The generator must further determine if the waste exhibits a hazardous waste characteristic, as identified in subpart C of 40 CFR 261. The generator may do this by testing the waste according to methods set forth in that same subpart or by using knowledge of the hazardous characteristics of the waste.

Additional considerations and sources

Hazardous waste requirements are found in the Missouri Hazardous Waste Management Laws, Sections 260.345 through 260.575 of the Revised Statutes of Missouri (RSMo). The Missouri Hazardous Waste Regulations are found in Title 10, Division 25 of the Code of State Regulations (CSR). Most of the federal environmental requirements in Title 40 of the Code of Federal Regulations (CFR) are adopted by reference into the Missouri regulations.

Copies of the Revised Statutes of the State of Missouri are available through the Revisor of Statutes at (573) 526-1288, or are available on the Web at www.moga.mo.gov. Copies of the Missouri Code of State Regulations are available through the Missouri Secretary of State at (573) 751-4015, or are available online at www.sos.missouri.gov/adrules/csr/csr.asp. Federal Regulations may be viewed at federal depository libraries or may be purchased from a U.S. Government Bookstore, the U.S. Government Printing Office, or from a commercial information service such as the Bureau of National Affairs. Federal Regulations are also available online at www.gpoaccess.gov/cfr/index.html.

For more information call or write:

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